IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE NO.1245 OF 2006
IN
EXECUTION APPLICATION NO.405 OF 2006
IN
AWARD (L) NO.77 OF 1998

M/s. A. Infrastructure Ltd. ...Decree-holder
Vs.
M/s.Sylvester and Company ...Judgment Debtor

Mr.Rafeeq Peermohimodeen with Ms. Mamta Singh i/b.Paras Kuhad & Associates for Claimant
Mr. H.N.Thakur i/b. Thakore Jariwala & Associates for Respondent

CORAM: SMT. ROSHAN DALVI, J.
DATED: 9TH MARCH, 2007

P.C.

1. Upon a reference dated 5th June, 1995 and the Abitration proceedings that transpired, an Arbitration Award came to be passed on 9th June, 1997. It is this Award that the Claimant seeks to execute. Since last more than 2 years have transpired after the Award is passed this notice under Rule 22 of Order 21 of the CPC has been taken out. The Notice has been served upon the Respondent on 11th

October, 2006. It is endorsed by the Respondent Company. The report of the Sheriff's Bailiff shows the original endorsement.

2. No affidavit in reply has been filed in the Notice since October, 2006.

3. It is now contended on behalf of the Respondent that since the reference was filed under various provisions of the Arbitration Act, 1940 the execution of the Award must also be levied under that Act.

4. It is contended on behalf of the Respondents that the Award is sought to be executed under the provisions of the Arbitration and Conciliation Act, 1996.

5. It is contended that the claimants knew that the provisions of the Arbitration Act of 1940 applies and, therefore, they filed the Award with the Prothonotory and Senior Master of this Court.

6. Under Section 85 of the Arbitration and Conciliation Act, 1996 the Arbitration Act of 1940 stands repealed. Under Section 85(2)(a) the Act of 1940 could apply in relation to Arbitration proceedings which commence before the new Act

came into force unless otherwise agreed by the parties (emphasis supplied).

7. The Arbitration Award has been passed expressly under the Arbitration and Conciliation Act, 1996. The Respondents knew of the Award passed. The Respondents took part in the Arbitration Proceedings even after the Act came into force. The Award has been passed on 9th June, 1997. It has been allowed to be so passed.

8. Under the new Act the Award could have been challenged under Section 34, which is not done. All these facts show the implied agreement between the parties that the new Act would apply. Hence, the Respondents' objection for execution of the Award under the New Act on the ground that the reference to Arbitration was made before the new Act came into force has no substance.

9. The provisions contained in Section 85(2)(a) does not require an express agreement of the parties. Consequently an agreement may be oral or implied upon such implied agreement, the parties are bound by the provisions of the new Act which was in force at the time of the passing of the Award is seen.

10. Hence, the total absence of reply to the notice since October, 2006 becomes pertinent. No case is shown against the Notice.

11. Notice No. 1245 of 2006 is made absolute as prayed for.

(SMT.ROSHAN DALVI, J.)